

**REMARKS**

This Amendment and Request for Reconsideration is submitted in response to an outstanding Office Action dated May 29, 2007, the shortened statutory period for response set to expire on August 29, 2007. Accordingly, this response is timely and no extension of time or fee is believed due. In the event that the Commissioner determines an extension of time, or associated fee is due, the undersigned hereby petitions for such extension of time and authorizes the Commissioner to charge any required fee to the Milbank deposit account 13-3250.

Applicant wants to thank the Examiner for time taken during a telephone interview to discuss the pending claims and cited prior art, and also for the further discussion regarding possible amendments to the claim language. This amendment conforms generally with the issues addressed during those discussions, and the supporting remarks and argument include the arguments that were made during the interview.

I. **Status of the Claims**

Please cancel claims 30-52 without prejudice to prosecution in continuation or divisional applications. Please amend claims 1, 28 and 29 as indicated above. Claims 1-29 are now pending in the application. Claims 1, 28 and 29 are independent claims.

Applicant acknowledges the Examiner's citation of statutory authority as a basis for claim rejections.

II. **Double Patenting Rejection**

The Examiner has rejected claims 1-29 as in conflict with claims 1-29 of co-pending application Ser. No. 11/724,972. Applicant first points out that by preliminary amendment in Ser. No. 11/724,972, claims 1-29 were cancelled. Applicant also notes that as above, claims 30-52 of the instant application have been cancelled. Accordingly, applicant

submits that there are no longer any conflicts in the claims of the instant application and Ser No. 11/724,972, and asks for withdrawal of the rejection.

III. Rejections under 35 U.S.C. § 102

The Examiner has rejected claims 1-5, 7, 8 and 11-29 under 35 U.S.C. § 102 as being anticipated by U.S. Published Patent Application No. US 2002/0147670 A1 to *Lange*.

The Examiner states with respect to claim 1 that *Lange* discloses sharing risk in paragraph 46; aggregating premiums (at least partially by the holders) to form a loss reduction fund (hedge fund) and determining losses incurred by holders in paragraph 27 and 34; and, reimbursing at least a portion of the losses in the Abstract and paragraphs 1-5.

Applicant respectfully submits that the claimed inventions and the disclosure of *Lange* are fundamentally different. Applicant submits that *Lange* teaches systems and methods to conduct demand-based trading for financial products. The goal of *Lange* is to reduce transaction costs for market participants who make investments in contingent claims relating to events of economic significance. Contingent claims in *Lange* are contingent in that their payout or return depends on the outcome of an observable economic event with more than one possible outcome. Possible outcomes fall within “states” which are mutually exclusive and collectively cover all possible outcomes for the economic event. An example of a contingent claim in *Lange* is a digital call option where the investor receives a payment if the underlying asset, stock or index expires at or above a specific strike price – and receives no payment if the underlying asset, stock or index expires below the strike price. The contingent claims pertaining to an event in *Lange* have a trading or auction period in order to finalize the demand for each defined state; then another period to observe the economic event on which the contingent claim is based. The payouts or returns on all of the contingent claims during a trading or auction period pertaining to

a particular economic event are (ignoring fees) “zero sum” – i.e. the total of all the investments in all of the defined states equals the total of all the payouts following the outcome of the economic event. In *Lange*, during a trading or auction period, the payouts or returns payable on the contingent claims adjust with changes in the distribution, or relative concentration, of amounts invested in (i.e., the demand for) each of the states – and are finalized at the conclusion of the trading or auction period. In other words, the process by which the payout or return payable for each contingent claim in *Lange* is finalized is “demand based” – i.e., it depends on the total amount invested in (i.e., the total demand for) all of the defined states and the relative amount invested in (i.e., the relative concentration of demand for) each of the defined states. Upon termination of the period to observe the outcome of the economic event on which the contingent claims are based – and the identification of the defined states that occurred and those that did not occur – payouts or returns are allocated to each investment. More specifically, in *Lange*, after the outcome of the observable economic event is known, the demand-based contingent claim mechanism allocates payouts or returns to defined states that occurred – based on the demand-based payouts or returns for those defined states as finalized at the conclusion of the trading or auction period. Stated another way, in *Lange*, the payout or return to each investment in each of the defined states that did not occur is zero, and the sum of the demand-based payouts or returns to all of the investments in defined states that did occur equals (ignoring fees) the total of all of the investments in all of the defined states. To summarize *Lange*, “losers pay winners” as determined by demand-based pricing and the outcome of an observable economic event.

By contrast, claim 1 recites a method for sharing risk of loss among a plurality of investment instrument holders. The method comprises identifying a plurality of holders of investment instruments that desire sharing of a risk of loss, wherein the investment instruments

of each holder are diverse with respect to the investment instruments of other holders, forming a diversified set of investment instruments. The method further comprises aggregating premiums to form a loss reduction fund, the premiums at least partially contributed by the plurality of holders. The method further comprises determining which of the plurality of holders incurred a loss in the respective investment instruments at a predetermined time, wherein some of the holders may incur a loss and other holders may not incur a loss. The method further comprises determining losses incurred by the holders that incurred a loss, wherein the amount of loss from one holder may be different from the loss of another holder. The method further comprises reimbursing at least a portion of the losses incurred by the holders that incurred a loss, wherein reimbursement to a particular investment instrument holder is at least partially determined by the loss of the particular holder, with consideration for losses of the plurality of holders, where some holders may be reimbursed and other holders may not be reimbursed.

Thus, one fundamental difference that distinguishes claim 1 from *Lange* is the principle and economic advantage of diversification of investment on economic events that are different (*i.e.*, diversified) from each other. By contrast, *Lange* is based on investment on an economic event – without the benefit of diversification among different economic events. In claim 1, “winners pay losers” as determined by the outcomes of diversified economic events – whereas in *Lange*, “losers pay winners” as determined by the outcome of an economic event and demand-based adjustable returns. At least for these reasons, applicant submits that *Lange* does not disclose or teach the features of claim 1 and requests that the Examiner withdraw the rejection.

Independent claims 28 and 29 include limitations similar to claim 1, and applicant submits that they are allowable for similar reasons.

With respect to claims 2-5, 7, 8 and 11-27, which depend from claim 1, applicant submits that because *Lange* does not disclose the features of claim 1, *Lange* necessarily fails to disclose the features of claims 2-5, 7, 8 and 11-27 that depend therefrom. For these reasons, applicant submits that *Lange* does not disclose or teach the features of claims 1-5, 7, 8 and 11-29, and requests that the Examiner withdraw the rejections.

IV. Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 6, 9 and 10 under 35 U.S.C. § 103 as being unpatentable over *Lange* in view of U.S. Patent No. 5,126,936 to *Champion*.

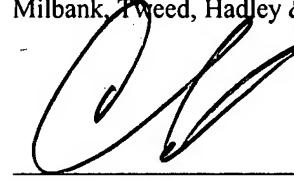
For the reasons discussed above, *Lange* does not teach or disclose the features of claim 1. *Champion* is relied on by the Examiner in combination with *Lange* for the disclosure of stocks, bonds, futures, options, derivatives, funds and trusts. Because *Lange* does not disclose the features of claim 1, the combination of *Lange* and *Champion* does not disclose or suggest the features of dependent claims 6, 9 and 10, and applicant respectfully asks the Examiner to withdraw the rejection under § 103 as to those claims.

V. Request for Reconsideration

Applicant respectfully submits that the claims of this application are in condition for allowance. Accordingly, reconsideration of the rejection and allowance is requested. If a conference would assist in placing this application in better condition for allowance, the undersigned would appreciate a telephone call at the number indicated.

PATENT  
Docket No.: 36861-00002

Respectfully submitted,  
Milbank, Tweed, Hadley & McCloy LLP



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Chris L. Holm  
Reg. No.: 39,227

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Milbank Tweed Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
(212) 530-5000 / (212) 530-5219 (facsimile)